IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1580 of 2001

to

FIRST APPEALNo 1597 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

TURSHIBHAI PARSOTTAMBHAI

Appearance:
Mr.Mukesh Patel, learned AGP for the appellants.
MR NITIN M AMIN for the Respondents.

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE D.H.WAGHELA

Date of decision: 04/04/2001

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

1. The delay of 16 days in filing each of these Appeals under Sec.54 of the Land acquisition Act read with Sec.96 of the Civil Procedure Code was condoned on 28.3.2001 by the orders passed in the concerned Civil Applications seeking condonation of delay.

2. Admit. Issue Notice. Mr. Nitin M.Amin waives service of notice of admission on behalf of respondents. On the request of both the sides, the matters are taken up for final disposal right today.

3. This group of 18 First Appeals preferred by the Special Land Acquisition Officer, Narmada Project, Unit No.3 and the Executive Engineer, Sardar Sarovar Narmada Nigam, Saurashtra Branch Canal, Division No.2/5,Limadi under Sec.54 of the Land Acquisition Act read with Sec.96 of the Civil Procedure Code are directed against the judgment and order passed by the 2nd Extra Assistant Judge and Special Judge (LAR), Ahmedabad (Rural) at Mirzapur, Ahmedabad on 28.12.1999 in Land Acquisition Reference Cases Nos.2538 to 2555 of 1996, Land Acquisition Reference Case No.2545 of 1996 being the main case.

4. The lands of village Patna, Taluka Dhandhuka, District Ahmedabad were sought to be acquired for the Limadi Branch Canal of Narmada Project. For this purpose, Notifications under Sec.4 were issued on 21.10.93 and 24.9.92. Notifications under Section 6 were later on issued and one of such Notification was issued on 7.7.93. Thereafter, the Land Acquisition Officer passed the Award on 3.1.96 and 8.2.96 fixing the rate of compensation to be paid to the claimants at the rate of Rs.00.60 Ps. and Rs.00.90 ps. per sq.mtr. The claimants did not feel satisfied and took the matter for Reference under Sec.18 of the Land Acquisition Act and the Reference Court determined the rate of compensation as Rs.28/-- and Rs.29/-- per sq.mt. vide impugned common judgment and order dated 28.12.99, as aforesaid, which is the subject matter of challenge in all these Appeals.

5. The Reference Court while determining the rate of compensation at the rate of Rs.28/-- and Rs.29/--, has relied upon the previous Award Exh.48 in which the lands of the same village Patna were the subject matter of acquisition. In that case, the Notification under Sec.4 was issued on 10.12.87 and the Reference Court had

ultimately determined the rate of compensation at Rs.21/-- per sq.mt. Reference Court relied upon the settled principle that an award passed by a competent court, if comparable, is relevant for fixation of compensation and even if that award relates to a land in the nearby area or town, the same can be considered for determining the comparable value, having regard to the reasonable proximity. No material whatsoever has been pointed out to show before us as to why the lands, which are the subject matter of acquisition in the present case, should be treated to be of lower fertility and of value lower than that which was determined in the case of lands, which were under consideration in the previous award Exh.48. There is no dispute that the lands have been acquired from the same village and for the same purpose and the rate of Rs.28/-- and Rs.29/-- has been fixed after taking due notice of the fact that in the present cases, the Notification under Sec.4 had been issued in 1993 whereas in the previous award Notification under Sec.4 was issued in the year 1987. We, therefore, find that Exh.48 has been rightly relied upon by the Reference Court and the rate of Rs.28/-- and Rs.29/-- per sq.mt., as has been fixed by the Reference Court in the present cases, is just and adequate and does not warrant any interference by this Court. Therefore, the impugned award requires no interference by this court so far as the rate of compensation of Rs.28/-- in respect of the lands for which Notification under Sec.4 was issued on 24.9.92 and Rs.29/-- in respect of the lands for which Notification under Sec.4 was issued on 21.10.93 are concerned.

6. The learned AGP then submitted that the Reference Court has committed an error of law in directing that 5% Government share for new tenure land should not be deducted from the amount of compensation. So far as this contention is concerned, the 5% Government share has to be deducted in view of the State Amendment under Sec.11A and this Court has already taken a considered view after noticing the earlier decision of the Division Bench wherein the State Amendment was not pointed out to the Court and the Supreme Court judgment, which had gone to the Supreme Court from Maharashtra, and it was made clear that in Maharashtra there was no such State Amendment like that of Gujarat State Amendment through Sec.11A. Mr. Nitin Amin, learned counsel for the claimants, has submitted that he does not contest if the award is modified to that extent and it is directed that 5% Government share be deducted in case of new tenure land in the instant case also.

7. For the reasons aforesaid, so far as the rates determined by the Reference Court are concerned, no interference is warranted and to that extent the Appeals are dismissed. But so far as the direction with regard to the non deduction of 5% Government share in respect of new tenure land is concerned, the common judgment and order, which is impugned before us, is modified to the extent that 5% Government share shall be deducted from the compensation in case of new tenure lands. It is also made clear that there is no question of payment of interest on any amount of solatium or on additional amount of compensation under Sec.23(1-A) of the Land Acquisition Act and the impugned award is hereby clarified accordingly.

8. All these 18 Appeals are partly allowed as above with no order as to costs.

It is expected that the due amount of compensation, to which the claimants are found to be entitled in terms of this order, shall be paid within a period of three months from the date the certified copy of this order is served upon the concerned authority by either of the parties.

(M.R.Calla,J)

(D.H.Waghela,J)